Goh Keat Peng v Public Prosecutor

HIGH COURT (KUALA LUMPUR) — CRIMINAL APPLICATION NO 44–27 OF 2000
ZULKEFLI J
13 APRIL 2001

Criminal Procedure *— Prosecution — Consent of Public Prosecutor — Consent does not state specifically which offences Public Prosecutor had consented to — Applicant prejudiced in preparation of defence — Full and adequate consideration by Public Prosecutor necessary before grant of consent — Whether consent defective — Police Act 1967 s 27(5)*

Criminal Procedure *— Charge — Framing or particulars of — Failure to specify which offences applicant had been charged with — Accused entitled to understand nature of charge — Whether charge defective — Police Act 1967 s 27(5)*

The applicant had been charged for an offence under s 27(5) of the Police Act 1967 ('the Act'). The learned magistrate had dismissed the preliminary objection raised by the applicant and the applicant applied to move the court into exercising its revisionary powers. The applicant argued that: (i) the consent in writing of the Public Prosecutor to prosecute an offence under s 27C(1) of the Act was defective as it did not state specifically which of the offences in s 27(5) that the Public Prosecutor had consented in writing for the applicant to be prosecuted; and (ii) the charge framed against the applicant was also defective as it did not particularize and state specifically which of the offences in s 27(5) that the applicant had been charged.

Held:

(1) Having analyzed the provision of s 27(5) read with the provisions of ss 27(5A), 27(5B), 27(5C), 27(1), 27(2) and 27(3) of the Act, the consent to prosecute issued by the Public Prosecutor under s 27C(1) of the Act in the case of the applicant was defective and bad in law because the consent did not specifically and accurately state which of the offences under s 27(5) of the Act the applicant had been charged. The applicant in the circumstances of the case had been prejudiced in the preparation of his defence because he did not know whether the provision of ss 27(5A), 27(5B) and/or 27(5C) of the Act would apply or not to his case (see p 181F–G). Further, the Public Prosecutor had not given full and adequate consideration of the applicant's case when issuing the consent. Having found that there were 15 distinct offences that could be committed by the applicant under s 27(5) of the Act, the Public Prosecutor should state in the consent specifically which of the offences under s 27(5) of the Act the applicant had been charged

(see p 181G–H).

(2) The charge was also defective as it did not comply with the requirement of s 152(3) of the Criminal Procedure Code. The charge failed to state clearly and specifically which of the offences provided under s 27(5) of the Act the applicant had been charged (see p 183B). An accused person on trial in the interest of justice must be made to fully and truly understand the nature of the charge he is asked to plead to (see pp 183I–184A). The applicant was hereby directed to appear before the learned trial magistrate for an order of discharge not amounting to acquittal (see p 184H).

[**Bahasa Malaysia summary**

Pemohon telah dituduh dengan kesalahan di bawah s 27(5) Akta Polis 1967 ('Akta tersebut'). Majistret yang arif telah menolak bantahan awal yang ditimbulkan oleh pemohon dan pemohon telah memohon untuk mengesa mahkamah menggunakan kuasa penyemakannya. Pemohon menghujahkan bahawa: (i) kebenaran bertulis Pendakwa Raya untuk mendakwa satu kesalahan di bawah s 27C(1) Akta tersebut adalah cacat kerana ia tidak menyatakan dengan khusus mana antara kesalahan dalam s 27(5) yang Pendakwa Raya tersebut telah berikan kebenaran bertulis untuk mendakwa pemohon; dan (ii) pertuduhan yang dikenakan terhadap pemohon adalah juga cacat kerana ia tidak diperinci dan dinyatakan dengan khusus mana antara kesalahan-kesalahan dalam s 27(5) yang pemohon telah dipertuduhkan.

Diputuskan:

(1) Setelah menganalisa peruntukan s 27(5) dibaca bersama peruntukan-peruntukan ss 27(5A), 27(5B), 27(5C), 27(1), 27(2) dan 27(3) Akta tersebut, kebenaran untuk mendakwa yang diberikan oleh Pendakwa Raya di bawah s 27C(1) Akta tersebut dalam kes pemohon adalah cacat dan tidak sah di sisi undang-undang kerana kebenaran tersebut tidak dinyatakan dengan khusus dan tepat mana antara kesalahan-kesalahan di bawah s 27(5) Akta tersebut yang pemohon dipertuduhkan. Pemohon dalam keadaan kes ini telah diprejudiskan di dalam pembelaan beliau kerana beliau tidak mengetahui sama ada peruntukan ss 27(5A), 27(5B) dan/atau 27(5C) Akta tersebut terpakai atau tidak dalam kes beliau (lihat ms 181F–G). Tambahan pula, Pendakwa Raya tidak memberikan pertimbangan yang menyeluruh dan mencukupi terhadap kes pemohon semasa memberikan kebenaran. Setelah mendapati bahawa terdapat 15 kesalahan yang berbeza yang mungkin telah dilakukan oleh pemohon di bawah s 27(5) Akta tersebut, Pendakwa Raya

hendaklah menyatakan dalam kebenaran tersebut mana antara kesalahan-kesalahan di bawah s 27(5) Akta tersebut yang pemohon dipertuduhkan (lihat ms 181G–H).

(2) Pertuduhan tersebut juga cacat kerana ia tidak mematuhi keperluan s 152(3) Kanun Acara Jenayah. Pertuduhan tersebut gagal untuk menyatakan dengan jelas dan khusus mana antara kesalahan-kesalahan yang diperuntukkan di bawah s 27(5) Akta tersebut pemohon telah dipertuduhkan (lihat ms 183B). Demi kepentingan keadilan, seorang tertuduh yang dibicarakan mestilah dipastikan bahawa beliau memahami sepenuh dan sebenarnya sifat pertuduhan yang ditanyakan kepada beliau untuk beliau membuat rayuan (lihat ms 183I–184A). Pemohon dengan itu diperintahkan untuk hadir di hadapan majistret perbicaraan yang arif untuk satu perintah perlepasan tidak terjumlah kepada pembebaskan (lihat ms 184H).]

Notes

For cases on framing or particulars of a charge, see 5 *Mallal's Digest* (4th Ed, 1997 Reissue) paras 817–911.

For cases on the requirement of consent, see 5 *Mallal's Digest* (4th Ed, 1997 Reissue) paras 1083–1095 and 2248.

Cases referred to

Abdul Hamid v PP [1956] MLJ 231 (refd)
Datuk Mahinder Singh v PP [1987] 2 CLJ 39 (refd)
Emperor v Lachiram ILR 28 Bom 553 (refd)
Liaw Kwai Wah & Anor v PP [1987] 2 MLJ 69 (refd)
Loy Chin Hei v PP [1982] 1 MLJ 31 (refd)
Pendakwa Raya v Cheah Beng Poh & Ors [1984] 2 MLJ 225 (refd)
PP v Chai Chong Yin & Anor [1983] 1 MLJ 267 (refd)
PP v Chew Siew Luan [1982] 2 MLJ 119 (refd)
PP v Margarita B Cruz [1988] 1 MLJ 539 (refd)

Legislation referred to

Anti-Corruption Act 1997
Courts of Judicature Act 1964 ss 31, 35(1)
Criminal Procedure Code ss 3, 152(3), 323(1), 376(3)
Dangerous Drugs Act 1952 ss 39B(1)(a), (b), (c), (3), 41B
Police Act 1967 ss 27(1), (2), (3), (4), (4A), (5), (5A), (5B), (5C), 27C(1)
Prevention of Corruption Act 1961 (Act 57) s 26(1)

Wong Kian Kheong (*Adlin Abdul Majid* with him) (*Lee Hishammudin*) for the applicant.

Zauyah Be bte Loth Khan (*Jagjit Singh* with her) (Attorney General's Chambers) for the respondent.

Zulkefli J. :

Preliminary

This is essentially a motion seeking to move the court into exercising its revisionary powers to deal with Arrest Case No E83–1330–99 filed before the Magistrate's Court at Kuala Lumpur whereby in that case the applicant, as an accused person, had been charged for an offence under s 27(5) of the Police Act 1967 ('the Act'). Before the learned trial magistrate, counsel for the applicant had on 28 February 2000 raised a preliminary objection on two issues namely that the consent to prosecute and the charge preferred against the applicant are defective. The learned trial magistrate dismissed both the issues of the preliminary objection. The trial of the applicant before the said magistrate's court had been stayed pending the decision of this court in this application. The applicant now seeks from this court the following order:

(i) that the record of proceedings before the said magistrate's court be called for and examined for the purpose of this honourable court satisfying itself as to the correctness, legality or propriety of the finding made by the learned magistrate on 28 February 2000 in relation to the consent in writing of the Public Prosecutor to prosecute an offence under s 27C(1) of the Act and the charge preferred against the applicant under s 27(5) of the Act;

(ii) that the finding of the learned magistrate be set aside;

(iii) that the applicant be discharged not amounting to acquittal; and

(iv) other orders or relief this honourable court deems fit and proper.

This application is supported by the affidavit of the applicant, Goh Keat Peng ('the affidavit') and is made on the following grounds:

(i) that the consent in writing of the Public Prosecutor to prosecute an offence under s 27C(1) of the Act as shown in exh 'GKP–14' of the affidavit is defective as it does not state specifically which of the offences provided by s 27(5) of the Act the Public Prosecutor had consented in writing for the applicant to be prosecuted therein;

(ii) that the charge framed against the applicant as shown in exh 'GKP–5' of the affidavit is defective as it does not particularize and state specifically which of the offences provided by s 27(5) of the Act the applicant had been charged and in the result the applicant had been prejudiced in the preparation of his defence.

Revisionary powers of the court

It is clear that this court sitting as the High Court has the powers of revision in respect of criminal proceedings and matters in the subordinate courts as provided under s 31 of the Courts of Judicature Act 1964 ('the CJA') which states as follows:

> The High Court may exercise powers of revision in respect of criminal proceedings and matters in subordinate courts in accordance with any law for the time being in force relating to criminal procedure.

Section 35(1) of the Courts of Judicature Act 1964 further provides as follows:

> In addition to the powers conferred on the High Court by this or any other written law, the High Court shall have general supervisory and revisionary jurisdiction over all subordinate courts and may in particular, but without prejudice to the generality of the foregoing provision, if it appears desirable in the interest of justice, either of its own motion or at the instance of any party or person interested, at any stage in any matter or proceeding whether civil or criminal, in any subordinate court, call for the record thereof and may remove the same into the High Court or may give to the subordinate court such directions as to the further conduct of the same as justice may require.

The provisions of ss 31 and 35 of the CJA as regards the revisionary powers of the High Court will have to be read with s 323(1) of the Criminal Procedure Code ('the CPC') which provides as follows:

> A judge may call for and examine the record of any proceeding before any subordinate Criminal Court for the purpose of satisfying himself as to the correctness, legality and propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of that subordinate court.

Based on the above provisions of the law, this court therefore has a wide range of revisionary powers in the interest of justice to deal with the matters or issues raised by the applicant in this application.

Defect of consent in writing of the Public Prosecutor and failure of the Public Prosecutor to adequately consider the offences under s 27(5) of the Act

Mr Wong Kian Kheong, the learned counsel for the applicant argued before me in the context and background that can be briefly summarized as follows:

(i) the consent in writing of the Public Prosecutor is required under s 27C(1) of the Act;

(ii) the said consent in writing issued against the applicant did not state specifically which of the offences provided by s 27(5) of the Act the applicant had been charged;

(iii) the Public Prosecutor did not adequately consider the applicant's case when issuing the said consent in writing because the consent in writing did not state specifically which of the offences provided by s 27(5) of the Act the applicant had been charged with;

(iv) the defect in the said consent in writing issued by the Public Prosecutor against the applicant cannot be cured under the law.

Section 27C(1) of the Act, inter alia, provides as follows:

> A prosecution for an offence under s 27 or 27A shall not be instituted except with the consent in writing of the Public Prosecutor ... .

It is clear that the consent in writing of the Public Prosecutor is required for the prosecution of an offence under s 27 of the Act. The applicant does not dispute the fact that such consent in writing has been issued by the Public Prosecutor. However the applicant contended that the said consent had not been issued in accordance with the requirement of the law.

The key or the essential words under s 27C(1) of the Act are the words 'A prosecution for an offence under s 27 … '. The provision of s 27C(1) of the Act as regards the requirement of consent in writing of the Public Prosecutor to be issued for the prosecution of an offence under the Act was introduced by the Amendment Act A685 to the Act which came into force with effect from 8 January 1988. I am of the view that from the choice of words used in s 27C(1) of the Act, Parliament must have intended that there is a requirement for the Public Prosecutor to specify in the said consent which of the offences under s 27 of the Act the accused is being charged with. In this respect, I find the nature of the wordings used in other laws or Acts where a consent or a sanction of the Public Prosecutor is required to prosecute an offence are not worded in the same form as found in s 27C(1) of the Act. In the Dangerous Drugs Act 1952 ('the DDA'), the consent of the Public Prosecutor under s 39B(3) is worded in the following words:

> A prosecution under this section shall not be instituted except by or with the consent of the Public Prosecutor.

Therefore, it can be seen that under the DDA it refers to the words 'a prosecution under this section' and not 'a prosecution for an offence' as in the said Act. It is also my view that under the DDA, the words 'a prosecution under this section' carry with it a very loose meaning in that the Public Prosecutor need not specify in the consent any distinct offence under s 39B(1)(a), (b) or (c) of the said Act because the consent issued need only refer to a prosecution under the relevant section of the said Act. Furthermore, under the DDA it is not required that the consent to be issued is to be in writing, unlike the provision of s 27C(1) of the Act which specifically states that the consent of the Public Prosecutor issued must be in writing. Under s 26(1) of the Prevention of Corruption Act 1961 (Act 57) which has been revoked by the Anti-Corruption Act 1997, the consent of the Public Prosecutor to prosecute an offence is worded in the following words:

> A prosecution under this Act shall not be instituted except by or with the consent of the Public Prosecutor.

Again it can be seen that under the said Prevention of Corruption Act 1961 the consent of the Public Prosecutor only refers to a prosecution under the Act and not a prosecution for an offence under the relevant s of the Act as found under 27C(1) of the Act. Under the said Prevention of Corruption

Act 1961 it also does not state that the consent of the Public Prosecutor must be in writing. A

For the purpose of assisting us in dealing with the two issues raised by the applicant it is necessary to reproduce the provision of s 27(5) of the Act in full as follows:

> Any assembly, meeting or procession — B
>
> (a) which takes place without a license issued under sub-s (2); or
>
> (b) in which three or more persons taking part neglect or refuse to obey any order given under sub-s (1) or sub-s (3),
>
> shall be deemed to be an unlawful assembly, and all persons attending, found at or taking part in such assembly, meeting or procession and, in the case of an assembly, meeting or procession for which no license has been issued, all persons attending, found at or taking part or concerned in convening, collecting or directing such assembly, meeting or procession, shall be guilty of an offence. C

The offence creating provisions in s 27 of the Act are found in s 27(4), (4A) and (5) of the Act. Section 27(4) states that any person who disobeys any order given under sub-s (1) or sub-s (3) of s 27 shall be guilty of an offence. Section 27(4A) states where any condition of a license issued under sub-s (2) of s 27 is contravened, the licensees shall be guilty of an offence. Puan Zauyah Be, the learned deputy public prosecutor ('DPP') submitted that there are three distinct offences under s 27 of the Act as provided in s 27(4), (4A) and (5). With that submission, I take it that the learned DPP contended that under s 27(5) of the Act there is only one distinct offence. The learned DPP further submitted that there is no requirement under the said Act that the material particulars of the offence must be specifically stated or particularized in the consent. The case of *PP v Chai Chong Yin & Anor* [1983] 1 MLJ 267 was cited as an authority for the said proposition. With respect to the learned DPP's contention that s 27(5) of the Act provides one distinct offence, I could not agree with her. A close look at the provision of s 27(5) of the Act would show that there is more than one distinct offence provided by the said s 27(5). Section 27(5) of the Act is a special provision because it is not only an offence creating provision but it also contained a deeming provision as to what constitutes an act of unlawful assembly under the Act. The definition of 'unlawful assembly' given by s 27(5) of the Act is as follows: D E F G

> An assembly, meeting or procession which takes place without a license issued under sub-s (2) of s 27 of the Police Act 1967 or an assembly, meeting or procession in which three or more persons taking part neglect or refuse to obey any order given under sub-s (1) or sub-s (3) of s 27 of the Police Act 1967. H

The learned counsel for the applicant submitted that if one examines closely the whole provision of s 27(5) and reading it with the relevant s 27(1), (2) and (3) of the Act, one will find that in the said s 27(5) there are 15 distinct offences and not one offence as contended by the learned DPP. Bearing in mind what has been defined as unlawful assembly under I

A the said s 27(5), I am in agreement with the learned counsel for the applicant that if we refer to the various different actus reus or circumstances spelt out in the said s 27(5), there are 15 distinct offences made up of the following:

(1) the offence of attending an assembly, meeting or procession which takes
B place without a license issued under sub-s (2) ('the first offence');

(2) the offence in which a person is found at the assembly, meeting or procession which takes place without a license issued under sub-s (2) of s 27 of the Act ('the second offence');

(3) the offence of taking part in the assembly, meeting or procession
C which takes place without a license issued under sub-s (2) of s 27 of the Act ('the third offence');

(4) the offence of taking part in convening an assembly, meeting or procession which takes place without a license issued under sub-s (2) of s 27 of the Act ('the fourth offence');

D (5) the offence of taking part in collecting an assembly, meeting or procession which takes place without a license issued under sub-s (2) of s 27 of the Act ('the fifth offence');

(6) the offence of taking part in directing an assembly, meeting or procession which takes place without a license issued under sub-s (2)
E of s 27 of the Act ('the sixth offence');

(7) the offence of concerned in convening an assembly, meeting or procession which takes place without a license issued under sub-s (2) of s 27 of the Act ('the seventh offence');

(8) the offence of concerned in collecting an assembly, meeting or
F procession which takes place without a license issued under sub-s (2) of s 27 of the Act ('the eighth offence');

(9) the offence of concerned in directing an assembly, meeting or procession which takes place without a license issued under sub-s (2) of s 27 of the Act ('the ninth offence');

G (10) the offence of attending an assembly, meeting or procession in which three or more persons taking part neglect or refuse to obey any order given under sub-s (1) of s 27 of the Act ('the tenth offence');

(11) the offence in which a person is found in an assembly, meeting or procession whereby three or more persons taking part neglect or refuse to obey any order given under sub-s (1) of s 27 of the Act ('the
H eleventh offence');

(12) the offence of taking part in an assembly, meeting or procession whereby three or more persons taking part neglect or refuse to obey any order given under sub-s (1) of s 27 of the Act ('the twelfth offence');

I (13) the offence of attending an assembly, meeting or procession in which three or more persons taking part neglect or refuse to obey any order given under sub-s (3) of s 27 of the Act ('the thirteenth offence');

(14) the offence in which a person is found in an assembly, meeting or procession whereby three or more persons taking part neglect or refuse to obey any order given under sub-s (3) of s 27 of the Act ('the fourteenth offence'); and

(15) the offence of taking part in an assembly, meeting or procession whereby three or more persons taking part neglect or refuse to obey any order given under sub-s (3) of s 27 of the Act ('the fifteenth offence').

The above contention that there could be a classification of 15 distinct offences provided under s 27(5) of the Act is fortified by the fact that the provisions of ss 27(5A), (5B) and (5C) of the Act are only applicable in reference to specific offences as provided under the said s 27(5) of the Act. It is therefore necessary to refer to the provisions of s 27(5A), (5B) and (5C) of the Act to show the justification as to why there is a need to state specifically in the said consent in writing of the Public Prosecutor which of the offences provided by s 27(5) of the Act the applicant had been charged with. Section 27(5A) of the Act states as follows:

> In any prosecution for an offence under sub-s (5) of attending, being found at or taking part in an assembly, meeting or procession which is an unlawful assembly, it shall not be a defence that the person charged did not know that the assembly, meeting or procession was an unlawful assembly or did not know of the facts or circumstances which made the assembly, meeting or procession an unlawful assembly.

It would appear that s 27(5A) of the Act provides that it shall not be a defence under the first to the third offences, and under the tenth to the fifteenth offences as hereinbefore classified that the person charged did not know that the assembly, meeting or procession was an unlawful assembly or did not know of the facts or circumstances which made the assembly, meeting or procession an unlawful assembly. It is clear therefore that the provision of s 27(5A) of the Act does not apply for the fourth to the ninth offences as hereinbefore classified. Section 27(5B) of the Act states as follows:

> In any prosecution for an offence under sub-s (5) of attending or being found at an assembly, meeting or procession which is an unlawful assembly, it shall be a defence that the presence of the person charged came about through innocent circumstances and that he had no intention to be otherwise associated with the assembly, meeting or procession.

Therefore according to the provision of s 27(5B) of the Act any person attending or being found at an assembly, meeting or procession which is an unlawful assembly can rely on a defence that the presence of the person charged came about through innocent circumstances and that he had no intention to be otherwise associated with the assembly, meeting or procession. Section 27(5B) of the Act would appear to be applicable only to the first, second, tenth, eleventh, thirteenth and the fourteenth offences as hereinbefore classified. A perusal of the provision of s 27(5C) of the Act would further show that the said section creates a rebuttable

presumption only for the fourth to the ninth offences as hereinbefore classified. Section 27(5C) of the Act states as follows:

> For the purposes of sub-s (5), where it appears from all the circumstances relating to an assembly, meeting or procession that it was convened, collected or directed by or with the involvement, participation, aid, encouragement, support or connivance of an organisation, every member of the governing body of the organisation shall be deemed to have taken part or been concerned in convening, collecting or directing the assembly, meeting or procession unless he proves that he did not know nor had any reason to believe or suspect that the assembly, meeting or procession was going to take place or, if he knew or had reason to believe or suspect as aforesaid, he had taken all reasonable steps to prevent the assembly, meeting or procession from taking place or, if it was not reasonably within his power to so prevent, he had publicly objected to or dissociated himself from the convening, collecting or directing of the assembly, meeting or procession.

Based on the provisions of s 27(5A), (5B) and (5C) of the Act it could be seen that there is a distinction amongst the offences as provided under s 27(5) of the Act. It is also observed that a person who is not present in an 'unlawful assembly' can also be charged under the fourth to the ninth offences as hereinbefore classified.

The consent in writing of the Public Prosecutor issued under s 27C(1) of the Act against the applicant as shown by the exh 'GKP-14' only states as follows:

> ... saya, Azahar bin Mohamed, Timbalan Pendakwa Raya, dengan ini memberi izin bagi pendakwaan penama-penama seperti disenaraikan dalam lampiran yang dikembalikan kerana kesalahan di bawah s 27(5) Akta Polis 1967 ...

I am of the view that having analyzed the provision of s 27(5) read with the provisions of ss 27(5A), (5B), (5C), (1), (2) and (3) of the Act, the consent to prosecute issued by the Public Prosecutor under s 27C(1) of the Act in the case of the applicant is defective and bad in law because the said consent does not specifically and accurately state which of the offences under s 27(5) of the Act the applicant had been charged. The applicant in the circumstances of the case had been prejudiced in the preparation of his defence because he does not know whether the provision of ss 27(5A), (5B) and/or (5C) of the Act would apply or not to his case.

Looking at the consent in writing of the Public Prosecutor issued for the applicant in this case as in exh 'GKP-14', I am of the view that the Public Prosecutor had not given full and adequate consideration of the applicant's case when issuing the said consent. This is so because having found that there are 15 distinct offences that can be committed by the applicant under s 27(5) of the Act as hereinbefore classified, the Public Prosecutor should state in the said consent specifically which of the offences under s 27(5) of the Act the applicant had been charged. There is a great difference between a sanction to prosecute and a consent to prosecute. On this point His Lordship Justice Smith in the case of *Abdul Hamid v PP* [1956] MLJ 231 had this to say at p 232:

> There is an essential difference to my mind between a sanction and a consent. A prosecution can be sanctioned without any deep consideration of the particular case. *Full consideration is required for consent since 'consent' is an act of reason, accompanied with deliberation*, the mind weighing, as in a balance, the good and evil on each side. (Emphasis added).

Defect of consent in writing of the Public Prosecutor not curable under the law

Section 27C(1) of the Act requires the consent of the Public Prosecutor to be in writing. In the case of *Datuk Mahinder Singh v PP* [1987] 2 CLJ 39, whereby it concerned a sanction in writing of the Public Prosecutor, his Lordship KC Vohrah J had this to say at p 40:

> With regard to the matter of sanction, it will be noted that the sanction of the Public Prosecutor (solicitor general or a deputy Public Prosecutor) is required to be a 'previous' sanction and that has, inter alia, to be in writing (see sub-s (iii) of s 129 of the Criminal Procedure Code), clearly nullifying the argument of the learned deputy Public Prosecutor that the said officer had sanctioned the prosecution of the offences named in s 129 of the Code.

Similarly, in the present case notwithstanding the presence of the learned DPP to prosecute the applicant, I am of the view that the provision of s 27C(1) of the Act clearly requires the said consent of the Public Prosecutor to be stated in writing. The defect in the said consent to prosecute as shown in exh 'GKP-14' cannot be cured with the presence of the learned DPP who prosecutes the applicant for an offence under s 27(5) of the Act. It must be emphasized here that the provisions of the Criminal Procedure Code ('the CPC') are not applicable when there are specific provisions in the Act. On this point, I would like to refer to the provision of s 3 of the CPC which states as follows:

> All offences under the Penal Code shall be enquired into and tried according to the provisions hereinafter contained, and all offences under any other law shall be enquired into and tried according to the same provisions: *Subject however to any written law for the time being in force regulating the manner or place of enquiring into or trying such offences*. (Emphasis added).

In the presence case before this court, there is a specific provision in relation to the requirement of obtaining the consent in writing of the Public Prosecutor to prosecute an offence under s 27(5) of the Act. In the circumstances, it is my view that the general doctrine of 'alter ego' under s 376(3) of the CPC does not apply, and the presence of the learned DPP to prosecute the applicant will not cure the defect of the said consent to prosecute as in exh 'GKP-14'. On this point I would like to refer to the two cases of *Loy Chin Hei v PP* [1982] 1 MLJ 31 and *PP v Chew Siew Luan* [1982] 2 MLJ 119 which involved the provisions regulating the granting of bail under the DDA. In both the above cited cases the court took the view and decided that the provision in the CPC relating to bail does not apply having regard that there is a specific provision regulating the granting of bail under the said DDA. In these two cases, the court decided that the restriction on bail under s 41B of the DDA is absolute and neither the court

below nor the High Court has power to admit to bail any person charged thereunder with any offence punishable with death or more than five years' imprisonment or even for lesser terms when the Public Prosecutor certified that it is against the public interest to allow bail.

Defect in the charge framed against the applicant

Having perused the charge as shown in exh 'GKP-5' of the affidavit it is also my finding that the said charge is defective on the ground that it does not comply with the requirement of s 152(3) of the CPC. The said charge failed to state clearly and specifically which of the offences provided under s 27(5) of the Act the applicant had been charged with. Section 152(3) of the CPC provides, inter alia, as follows:

> ... so much of the definition of the offence must be stated so as to give the accused notice of the matter with which he is charged.

It has earlier been established that there are 15 distinct offences that can actually be committed by the applicant under the provision of s 27(5) of the Act. The charge as in exh 'GKP-5' of the affidavit only states as follows:

> Bahawa kamu ... telah didapati berada dalam satu perhimpunan haram (unlawful assembly) dan oleh yang demikian kamu telah melakukan kesalahan di bawah s 27(5) Akta Polis 1967 ...

The above charge framed against the applicant can be compared and contrasted with the charge as framed in the case of *Pendakwa Raya v Cheah Beng Poh & Ors* [1984] 2 MLJ 225 whereby in that case the High Court held, inter alia, that the charge neither contained any element extraneous to nor omitted any element from s 27(5) of the Act. The accused person was therefore not misled or in any way prejudiced by the charge. The charge in that case reads as follows:

> ... That you ... did take part in an unlawful assembly, to wit, an assembly in a public place for which no license has been issued under the provisions of s 27(2) of the Police Act (No 41 of 1967), and that you have thereby committed an offence under s 27(5)(a) ...

The above charge states clearly and specifically which one of the offences under s 27(5) of the Act was committed by the accused person whereby the offence is of taking part in the assembly, meeting or procession which takes place without a license issued under s 27(2) of the Act ('the third offence').

In the present case before this court, it is found that the words used in the charge framed are very wide in their terms and the applicant could not know which of the 15 offences under s 27(5) of the Act as hereinbefore classified is said to have been committed by the applicant. In the circumstances, the applicant will be prejudiced in the preparation of his defence and that the applicant will not be able to know whether the provisions of ss 27(5A), (5B) and/or (5C) of the Act would apply to his case. It has to be expressed here that an accused person on trial in the interest of justice must be made to fully and truly understand the nature of the charge

he is asked to plead to. On this point, I only need to restate what has been said by his Lordship KC Vohrah J in the case of *PP v Margarita B Cruz* [1988] 1 MLJ 539 at p 539 as follows:

> It behoves all magistrates and presidents to scrutinize the charges, to read the provision of the statute under which the charge is framed, to understand the constituent ingredients of the charge, to know the nature of punishment and appreciate the gravity of the charge. If the charge is defective or badly framed, the magistrate should point out the defects and request the prosecuting officer to amend the charge as the accused should truly understand the nature of the charge he is asked to plead to.

Conclusion

I am mindful of the fact that the powers of revision must be exercised judicially and within the limits and in the spirit of legislation (see the case of *Liaw Kwai Wah & Anor v PP* [1987] 2 MLJ 69). The principles which should guide the courts in the exercise of the revisionary powers have been clearly set out in the case of *Emperor v Lachiram* ILR 28 Bom 553 wherein Jenkins CJ, inter alia, had this to say:

> ... this controlling power of the court is a discretionary power and it must be exercised with regard to all the circumstances of each particular case, anxious attention being given to the said circumstances, which vary greatly.

It is to be noted that the relevant provisions of the CPC and the Act have been enacted with the primary purpose of ensuring proper conduct of the prosecution of an offence and to prevent injustice meted out on any party. In the context of the present application it is my finding that there has been a non-compliance of the requirement of the law with regard to the consent in writing of the Public Prosecutor issued under s 27C(1) of the Act and with regard to the charge framed against the accused for not specifying which of the offences as provided by the said s 27(5) of the Act had been committed by the applicant. Even assuming that the said consent to prosecute as in exh 'GKP-14' is found to be in order in that there is no requirement under the Act that the material particulars of the offence must be specifically stated or particularized in the consent, I would still make a finding that the charge framed against the applicant as an accused person is defective and bad in law and on this ground alone I would have granted the order sought for by the applicant. I have already perused the record of the proceedings of the trial magistrate relating to the trial of the applicant and I am satisfied that the learned magistrate had erred in law and in fact in dismissing the two points of preliminary objection raised by the learned defence counsel of the applicant. In the circumstances of the case, I hereby grant the orders sought for by the applicant under this application. The applicant is hereby directed to appear before the learned trial magistrate on a date to be fixed by the said magistrate court for the learned trial magistrate to make an order of discharge not amounting to acquittal of the applicant on the charge framed against the applicant on the grounds hereinbefore given by this court. The prosecution is at liberty thereafter to rectify the said defects in order for it to mount a proper conduct of the prosecution of

A the applicant under the relevant offence as provided under s 27(5) of the Act.

Order accordingly.

Reported by Benjamin Yong

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